

SHD Paraphrased Regulations - CalWORKs

090 Real-Property

090-1

Prior to January 1, 1998 and effective July 1, 1998, state regulations provided that real property, generally, is land and improvements. Real property includes, as a general rule, immovable property attached to the land such as trees, fences, buildings, etc. (§42-203.1, purportedly invalidated by W&IC §11155, and implemented by All-County Letter (ACL) No. 97-66, October 29, 1997, and reinstated by ACL No. 98-47, July 2, 1998, effective July 1, 1998)

091-1

Prior to January 1, 1998, state regulations provided that the net market value of nonexcluded real and personal property owned by an AFDC family shall not exceed \$1,000. If this limit is exceeded, the family or child is ineligible. The property limit is \$2,000 for AFDC FG/U recipients subject to the California Works Pays Demonstration Project. (§42-207.1, invalidated by W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997)

091-1A

Prior to January 1, 1998, state regulations provided that an AU which includes a recipient shall be allowed to retain countable real and personal property which does not exceed \$2,000. (§89-502.1, effective 4/1/94, renumbered to §89-115.11 effective July 9, 1995, invalidated by W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997)

091-2

CalWORKs applicants may have countable resources in an amount equal to the federal Food Stamp limit. (W&IC §11155, implemented effective January 1, 1998 by All-County Letter No. 97-66, October 29, 1997; and formally adopted as §42-207.1, effective July 1, 1998)

091-2A

Effective January 1, 1998, state law provided that notwithstanding W&IC §11257, an applicant or recipient for aid under W&IC §11000 to W&IC §12000 could retain, in addition to specified other resources, "countable resources equal to the amount permitted by federal law for qualification for Food Stamps. The county shall determine the value of personal property and automobiles in conformance with methods established under the Food Stamp Program." (W&IC §11155)

Between January 1 and June 30, 1998, the CDSS determined that real and personal property were to be evaluated under FS standards. (All-County Letter (ACL) No. 97-66, October 29, 1997, given regulatory effect under §185 of Assembly Bill No. 1542)

Effective July 1, 1998, the CDSS determined that personal property was to be defined in accord with FS regulations (§42-203.2), and "personal property and vehicles" were determined, included, and excluded using FS regulations at §§63-501.1 and .2. (§§42-211.2, 42-213.2)

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Real property regulations, contained in §42-200 et seq., which had supposedly been invalidated under ACL No. 97-66 were restored July 1, 1998. (ACL No. 98-47, July 2, 1998)

091-3

The maximum resource limit for an FS household shall be \$2,000. If the household includes one member aged 60 or older, the resource limit is \$3,000. Effective October 1, 2002, the household with a disabled member also has a resource limit of \$3,000.

Households (which are not categorically eligible households) with resources in excess of these amounts are ineligible to participate in the FS Program. (§63-409.12; Handbook §63-1101.1, made applicable to the CalWORKs program by, e.g., Handbook §42-207.2, as modified effective August 5, 1999; All-County Information Notice No. I-56-02, July 25, 2002, implementing the FS Reauthorization Act of 2002)

Excess resources shall not be counted if they are reduced to the resource limit in the month received. (§§63-504.351(b) and 63-504.372(a))

091-3A

State regulations effective from July 1, 1998 to August 25, 1999 provided that:

"An applicant or recipient AU may retain countable resources in an amount equal to the amount allowed in the Food Stamp regulations at Manual of Policies and Procedures §63-1101. The value of real and personal property including resources not excluded elsewhere in this chapter, owned by a CalWORKs FG/U family shall not exceed the Food Stamp resource limit. If the limit is exceeded, the family or child is ineligible." (§42-207.1, effective July 1, 1998) [Emphasis added]

An AU is defined as eligible persons living in the home, including the applicant child, any eligible sibling or half-sibling of the applicant child who meets the age requirement, and any eligible parent of the child or the child's eligible sibling. In certain instances the AU may consist of a pregnant woman, the caretaker relative of an SSI/SSP recipient child or of an FC recipient child, or the relative of a child who has been sanctioned by welfare-to-work (formerly GAIN). (§82-820)

For purposes of §42-200 et seq., the "members of the CalWORKs family are the child and his/her natural or adoptive parents and, when seeking aid for themselves, his/her eligible stepparents and needy caretaker relative, provided that they are not receiving SSI/SSP benefits." (§42-203.8, effective July 1, 1998)

Restricted accounts are exempt under state law and other state regulations, but they were not exempt under §42-200 et seq., nor were they exempt under FS regulations. (W&IC 11155.2; §89-100 et seq.; §63-500 et seq.)

091-3B

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An applicant or recipient AU may retain countable resources up to the amount allowed in Food Stamp (FS) regulations, at MPP §63-1101. The "family" or "child" is ineligible if the value of its countable real and personal property exceeds the FS resource limit. (§42-207.1, as revised effective August 5, 1999)

091-3C

FS regulations at §63-1101.1 allow "retention of \$3000 for an AU which includes at least one member aged 60 or older, and \$2000 for all other AUs." (Handbook §42-207.2)

Effective October 1, 2002, the \$3000 limit also applied to households with a disabled member. (All-County Information Notice No. I-56-02, July 25, 2002, implementing the FS Restoration Act of 2002)

092-1

Prior to January 1, 1998, state regulations provided that real and personal property must be actually available in order to be considered for AFDC purposes. "Property shall also be considered when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make that sum available for support and maintenance." (§42-201.1, invalidated per CDSS, purportedly by W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997. The CalWORKs real property regulations were restored effective July 1, 1998.)

092-3

Prior to January 1, 1998, and as of July 1, 1998 state regulations provided that nonexcluded real property that the AU is making a good faith effort to sell may be exempt from consideration as property to be included in the property reserve for a period of no more than nine consecutive months. As a condition of receiving aid, the applicant shall grant the county a lien against the property and agree in writing to begin immediately to make a good faith effort to sell the property. (§42-213.12)

A good faith effort to sell the property occurs when the property is listed for sale with a licensed real estate broker at the property's approximate fair market value and there is a willingness to negotiate the terms of the sale with potential buyers; or when an individual makes an effort to sell the property, including advertising weekly, placing a sign on the property indicating that the property is for sale, offering the property for sale at its approximate fair market value, and is willing to negotiate the terms of the sale. (§42-213.123, invalidated per CDSS supposedly by W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997. This CalWORKs regulation was restored effective July 1, 1998.)

092-4

Prior to January 1, 1998, and as of July 1, 1998 state regulations provided that there is a presumption that those who share title have equal rights to possession, control and use of the property. This presumption may be refuted by evidence to the contrary. The source and amount of funds invested in the property or the facts around the inheritance, if it was acquired in this way, must be determined in order to arrive at the share which the

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applicant or recipient and/or his spouse actually owns. (§42-205.2, invalidated per CDSS, supposedly by W&IC §11155, and implemented per CDSS by All-County Letter No. 97-66, October 29, 1997. This CalWORKs regulation was reinstated effective July 1, 1998)

092-5

When the AU claims a resource is unavailable because the AU is unaware of the resource, the federal interpretation for AFDC purposes is that the resource is unavailable as long as no member of the AU is aware of, or had reason to be aware of, the resource. The recipient has the burden of proof. (AFDC Action Transmittal No. ACF-AT-93-2, January 19, 1993)

093-3

Prior to January 1, 1998, state regulations provided that the owner of property is the person who has the legal title to, the right to or has possession of the property. Unless there is evidence to prove otherwise, it is presumed for purposes of determining eligibility that the person who "owns" the property has the right to possess, use, control, and dispose of the property. (§42-203.3, invalidated by CDSS, supposedly per W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997) Effective July 1, 1998 the CDSS reinterpreted W&IC §11155, and reinstated this section. (§42-203.3, effective July 1, 1998)

093-4

An estate in real property (other than an estate at will, or for a term not exceeding one year) can be transferred only by operation of law, or by an instrument in writing, signed by the grantor or the grantor's duly authorized agent. (Civil Code §§1091 and 1624(a)(3) and (4))

093-6

A transfer of property may be made without writing, unless there is a statute which requires a writing. (Civil Code (Civ. C.) §1052)

A transfer in writing is called a grant, or conveyance or bill of sale. (Civ. C. §1053) A grant takes effect only when it is delivered to the grantee. (Civ. C. §1054) A grant duly executed is presumed to have been delivered as of the date on the grant. (Civ. C. §1055)

094-1

Prior to January 1, 1998, state regulations provided that the "net market value" of property is the highest price that property, less encumbrances thereon, will bring in a sale by a willing seller to a willing buyer in the ordinary course of business. (§42-203.7, invalidated by CDSS, supposedly per W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997) This regulation was re-enacted, but applies only to real property in CalWORKs. (§42-203.7, effective July 1, 1998)

094-2

Prior to January 1, 1998 and effective July 1, 1998, state regulations provided that an AFDC applicant's or recipient's equity interest in real property is determined by

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subtracting allowable encumbrances from the market value of the property as determined by the most recent appraisal from the county assessor, recorder or tax collector. (§§42-215.1 and .2, invalidated by CDSS, supposedly per W&IC §11155, implemented by All-County Letter (ACL) No. 97-66, October 29, 1997, and reinstated effective July 1, 1998. This regulation was revised August 5, 1999 to change "AFDC" to "CalWORKs" and "equity interest" to "net market value".)

Encumbrances include property liens filed by the counties to repay AFDC grants received when the recipient is making a good faith effort to sell countable real property. (*Sidwell v. McMahon*; All-County Letter No. 90-27, March 16, 1990)

094-3

The value of all nonexempt resources, with the exception of vehicles specified in §§63-501.52 and .53 shall be their equity value. The equity value is the fair market value less encumbrances. (§63-501.12 as revised effective June 1, 2001)

095-1

Prior to January 1, 1998, state regulations provided that a home is excluded from property consideration if it is occupied by the CalWORKs AU. (§42-213.3, invalidated by CDSS, supposedly per W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997) This regulation was reinstated effective July 1, 1998. (§42-213.3, effective July 1, 1998)

095-2

Prior to January 1, 1998, state regulations provided that the separate and community share of both real and personal property of the stepfather is excluded from AFDC property evaluation. (§§42-213.11e. and 42-213.2p., invalidated by CDSS, supposedly per W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997) The regulation dealing with the real property of the stepfather was reinstated. (§42-213.11e., effective July 1, 1998)

095-3

Prior to January 1, 1998 and effective July 1, 1998, state regulations provided that the separate and community share of real property of the father of a child is excluded when the father is not married to the mother, has not legitimized the child under Civil Code §230, and is not maintaining a home with the mother. (§42-213.11d., invalidated by CDSS, supposedly per W&IC §11155, and implemented by All-County Letter No. 97-66, October 29, 1997) This CalWORKs regulation was reinstated effective July 1, 1998. (§42-213.11(d))

095-4

The value of a wheelchair or other devices required for use by an AFDC applicant or recipient with a disability (as referenced in the Americans with Disabilities Act of 1990) is excluded from property consideration. (All-County Letter No. 97-38, July 2, 1997)

095-5

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During the period from January 1 through June 30, 1998, the CDSS was given authority to implement the provisions of Assembly Bill No. 1542 through All-County Letter (ACL). The CDSS evaluated CalWORKs real property under Food Stamp (FS) regulations. (ACL No. 97-66, October 29, 1997)

Despite the language contained in W&IC §11155 the following regulation governed real property in CalWORKs from January 1 through June 30, 1998:

The home and surrounding property is excluded as a resource. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return. Households that currently do not own a home, but own a lot on which they intend to build, shall receive an exclusion for the value of the lot and, if it is partially completed, for the home. (§63-501.3(a))

095-6

During the period from January 1 through June 30, 1998, the CDSS was given authority to implement the provisions of Assembly Bill No. 1542 through All-County Letter (ACL). The CDSS evaluated CalWORKs real property under Food Stamp (FS) regulations. (ACL No. 97-66, October 29, 1997)

The following regulation governed CalWORKs and FS real property from January 1 through June 30, 1998:

Property which produces annual income consistent with its fair market value is exempt, even if used only on a seasonal basis. Such property shall include rental and vacation homes. (§63-501.3(d))

095-8

During the period from January 1 through June 30, 1998, the CDSS was given authority to implement the provisions of Assembly Bill No. 1542 through All-County Letter (ACL). The CDSS evaluated CalWORKs real property under Food Stamp (FS) regulations. (ACL No. 97-66, October 29, 1997)

The following regulation governed CalWORKs and FS real property from January 1 through June 30, 1998:

Resources whose cash value is not accessible to the household are exempt. Such resources include: Security deposits on rental property or utilities; property in probate; and real property which the household is making a good faith effort to sell at a reasonable price but which has not been sold. (§§63-501.3(i)(2) - (4), as renumbered effective June 1, 2001)

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095-11

During the period from January 1 through June 30, 1998, the CDSS was given authority to implement the provisions of Assembly Bill No. 1542 through All-County Letter (ACL). The CDSS evaluated CalWORKs real property under Food Stamp (FS) regulations. (ACL No. 97-66, October 29, 1997)

The following regulation governed CalWORKs and FS real property from January 1 through June 30, 1998:

At the time of application, any resources of a woman or women with children who are temporarily residing in a shelter for battered women shall be considered inaccessible if the resources are jointly owned by the resident and member of the former household from which the resident fled and the resident's access to such resources requires the consent of the resident and the member of the former household. (§63-501.3(n) as renumbered effective June 1, 2001)

095-12

During the period from January 1 through June 30, 1998, the CDSS was given authority to implement the provisions of Assembly Bill No. 1542 through All-County Letter (ACL). The CDSS evaluated CalWORKs real property under Food Stamp (FS) regulations. (ACL No. 97-66, October 29, 1997)

The following regulation governed CalWORKs and FS real property from January 1 through June 30, 1998:

The income and resources of nonhousehold members that have not been disqualified, such as Supplemental Security Income recipients, shall not be considered as income or resources to the household. (§63-503.45)

096-1

Prior to July 1, 1998, state law and regulations provided that: There shall be a period of ineligibility for any CalWORKs recipient who gives or transfers any income or resources for less than fair market value. This period shall result in a period of ineligibility for CalWORKs for the number of months, rounded down to the nearer whole number, "... that equals the quotient of the difference between the fair market value of the asset and the amount received for the asset divided by the standard of need applicable to the family under Section 11452." (W&IC §11157.5, implemented effective January 1, 1998 by All-County Letter No. 97-66, October 29, 1997; §42-221.1, enacted effective July 1, 1998, modified these laws and regulations)

096-1A

For purposes of computing eligibility and grant amount in CalWORKs, the family includes all members of the AU and those family members living in the home who are

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referenced in W&IC §11008.14. It is the position of the CDSS that CalWORKs does not count the income of any family member not previously considered under AFDC. In addition, all deeming formulae are eliminated, except for those individuals described in §44-133.5 per All-County Letter (ACL) No. 97-57, which implemented the *Ortega* court order. (ACL No. 97-59, October 14, 1997, as modified by ACL No. 98-17, March 13, 1998) Effective July 1, 1998, "family" is defined differently for property purposes only. (§42-203.8)

096-1B

State law governing recipients of CalWORKs who transfer income or resources was modified effective January 1, 1999, and provides, in pertinent part, as follows:

“However, a gift or any other transfer of assets, including income and resources, by a recipient for less than fair market value shall result in a period of ineligibility for aid under Chapter 2 (commencing with §11200) for the number of months, rounded down to the nearest whole number, that equals the quotient of the difference between the fair market value of the asset and the amount received for the asset divided by the standard of need applicable to the family under §11452. This section shall only apply to transfers of income or resources that would otherwise affect a recipient's eligibility for benefits or the amount of benefits to which he or she would be entitled.” (W&IC §11157.5, amended effective January 1, 1999 to add the last sentence quoted above)

096-1C

Notwithstanding W&IC §11157.5, state regulations, effective from July 1, 1998 through August 4, 1999 provided that:

"A period of ineligibility (POI) shall result when a recipient AU has a nonexcluded resource that would cause the AU to exceed its property limit for a month, then disposes of the property for less than its fair market value (FMV)." (§42-221.11, effective July 1, 1998, and revised effective August 5, 1999)

State regulations further provided that the POI shall be computed based on the amount that would have exceeded the property limit if the property had been transferred at its FMV. The POI is determined by establishing the FMV of the property transferred; adding other countable property; subtracting the appropriate property limit; dividing this amount by the MBSAC for the AU; and rounding the resulting figure down to the nearest whole number to determine the number of months in the POI. (§42-221.11, revised effective August 5, 1999)

096-1D

The receipt of CalWORKs shall not limit nor restrict a recipient's right to give, receive, sell, exchange, or change the form of property or income holdings. A period of ineligibility (POI) shall result when a recipient AU gives away or transfers, for less than Fair Market Value (FMV) nonexcluded income or property that would cause the AU "to

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exceed its eligibility for benefits." [emphasis added] (§42-221.1, as revised effective August 5, 1999)

096-1E

The POI for property transfers shall be computed based on the amount of property that, when added to other countable property, would have exceeded the property limit if the property had been transferred at the FMV. The POI is determined as follows:

- .211 Determine the FMV of the property transferred.
- .212 Add other countable property.
- .213 Subtract the amount of the property limit for the AU.
- .214 Subtract the amount received for the property (if any) from the FMV determined in .211.
- .215 Determine the lesser of .213 and .214.
- .216 Divide the amount determined in .215 by the MBSAC for the AU.
- .217 Round the resulting figure down to the nearer whole number to determine the number of months in the POI.

(§42-221.21, as revised effective August 5, 1999)

096-2

Conversion of property in CalWORKs occurs when a recipient changes an existing resource from one form to another. (§42-203.10, effective July 1, 1998)